Taylor Roofing Solutions, Inc. and Capitol Roofing Solutions, LLC, a single employer *and* United Union of Roofers, Waterproofers and Allied Workers, Local Union No. 2. Case 14–CA–211073

June 28, 2019

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN AND EMANUEL

The General Counsel seeks a default judgment in this case on the ground that Taylor Roofing Solutions, Inc. (Respondent Taylor) and Capitol Roofing Solutions, L.L.C. (Respondent Capitol), a single employer (collectively, the Respondent), has withdrawn its answer to the complaint. Upon a charge, amended charge, and second amended charge filed by United Union of Roofers, Waterproofers and Allied Workers, Local Union No. 2 (the Union) on December 5, 2017, January 11, 2018, and May 21, 2018, respectively, the General Counsel issued a complaint against the Respondent on May 30, 2018, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. The Respondent filed an answer on June 13, 2018. However, on October 23, 2018, the Respondent filed a motion to withdraw its answer, and on November 1, 2018, the Regional Director granted that motion.

On November 7, 2018, the General Counsel filed a Motion for Default Judgment with the Board. On February 14, 2019, the Board issued an Order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively states that an answer must be received on or before June 13, 2018, and that if no answer is filed, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Although the Respondent timely filed an answer on June 13, 2018, it later withdrew that answer. The withdrawal of an answer has the same effect as a failure to file an answer, i.e., the allegations in the complaint must be considered to be true.[1] Accordingly, based on the withdrawal of the Respondent's answer, we deem the allegations in the complaint to be admitted as true, and we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, Respondent Taylor has been an Illinois corporation with an office and place of business in Belleville, Illinois (Respondent's facility) and an office in Clayton, Missouri, and has been a contractor in the building and construction industry performing residential and commercial roofing. In conducting its operations during the 12-month period ending April 30, 2018, Respondent Taylor performed services valued in excess of $50,000 in states other than the State of Illinois.

At all material times, Respondent Capitol has been an Illinois limited liability company with its place of business at the Respondent's facility and has been a contractor in the building and construction industry performing residential and commercial roofing. In conducting its operations during the 12-month period ending April 30, 2018, Respondent Capitol performed services valued in excess of $50,000 in states other than the State of Illinois.

At all material times, Respondent Taylor and Respondent Capitol have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have administered a common labor policy; have shared common premises, facilities, and equipment; have provided services for and made sales to each other; have interchanged personnel with each other; have interrelated operations with common business purposes, sales, purchasing, and insurance; and have held themselves out to the public as a single integrated business enterprise. Based on its operations described above, Respondent Taylor and Respondent Capitol constitute a single integrated business enterprise and a single employer within the meaning of the Act.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

[1] See *Maislin Transport*, 274 NLRB 529 (1985). Indeed, when withdrawing its answer, the Respondent expressly stated that it "prays the NLRB order any and all such further relief as is appropriate, equitable, and available."

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act.

Gerrit Yank	Owner/Chief Executive Officer/Director of Respondent Taylor and Co-owner/Manager of Business Development of Respondent Capitol
Ellen Yank	Co-owner/Chief Operating Officer/Director of Respondent Capitol and Director of Respondent Taylor
Rodger Carpenter	President of Respondent Taylor (until March 2018)
Jesus Beltran Carranza -	Foreman of Respondent Taylor and Respondent Capitol
Juan Beltran Carranza	Foreman of Respondent Taylor and Respondent Capitol

About August 22, 2017, Respondent Taylor entered into a collective-bargaining agreement effective by its terms from March 1, 2017, through February 28, 2022, whereby Respondent Taylor recognized the Union as the exclusive collective-bargaining representative of the unit without regard to whether the Union's majority status had ever been established under Section 9(a) of the Act.

The unit of the Respondent's employees covered by the collective-bargaining agreement described above constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.[2]

From August 22, 2017, through February 28, 2022, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.[3]

Since about August 22, 2017, based on the acts and conduct described above, Respondent Capitol has been bound by the collective-bargaining agreement described above.

Since about August 22, 2017, the Respondent has failed and refused to apply the terms and conditions of the collective-bargaining agreement described above to all unit employees, including failing to pay all unit employees the wage rates specified in the collective-bargaining agreement, failing to make all fringe benefit contributions due on behalf of unit employees, and subcontracting unit work.

The terms and conditions of employment described above are mandatory subjects for the purposes of collective bargaining.

The Respondent engaged in the conduct described above without the Union's consent.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the limited exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(5) and (1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing and refusing to apply the terms and conditions of its collective-bargaining agreement with the Union in effect August 22, 2017, through February 28, 2022 (2017–2022 Agreement) to all unit employees by, among other things, failing to pay all unit employees the wage rates specified in the 2017–2022 Agreement, failing to make all fringe benefit contributions due on behalf of unit employees, and subcontracting unit work, we shall order the Respondent to adhere to and comply with the terms and conditions of the 2017–2022 Agreement and bargain in good faith and obtain the consent of the Union before making any changes in the terms and conditions of employment set forth in the 2017–2022 Agreement during its term. In addition, we shall order the Respondent to make the unit employees whole for any loss of earnings and other benefits they may have

[2] There is no specific unit description set forth in the complaint. However, in light of the Respondent's failure to file an answer to the complaint, there is no dispute that the unit described in the 2017–2022 collective-bargaining agreement is appropriate.

[3] The complaint alleges that the Respondent is a construction-industry employer and that it granted recognition to the Union without regard to whether the Union had established majority status. Accordingly, we find that the relationship was entered into pursuant to Sec. 8(f) of the Act and that the Union is therefore the limited Sec. 9(a) representative of the unit employees for the period covered by the contract. See, e.g., *A.S.B. Cloture, Ltd.*, 313 NLRB 1012, 1012 fn. 2 (1994) (citing *Electri-Tech, Inc*., 306 NLRB 707, 707 fn. 2 (1992), enfd. mem. 979 F.2d 851 (6th Cir. 1992), and *John Deklewa & Sons*, 282 NLRB 1375 (1987), enfd. sub nom. *Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988)).

suffered as a result of the Respondent's failure and refusal to apply the terms and conditions of the 2017–2022 Agreement to them, including contractual wages in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). We shall also order the Respondent to compensate unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards and file with the Regional Director for Region 14, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee, in accordance with *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016).

Moreover, we shall order the Respondent to make whole its unit employees by making all contractually required fringe benefit fund contributions that have not been made since about August 22, 2017, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). Further, the Respondent shall be required to reimburse the unit employees for any expenses ensuing from its failure to make the required fund contributions as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891, 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). Such amounts shall be computed in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.[4]

Finally, we shall order the Respondent to restore the status quo ante by transferring the work it subcontracted back to unit employees, to make the unit employees whole for any loss of earnings and other benefits suffered as a result of its unlawful subcontracting, and to reinstate any unit employees who were laid off as a result of the unlawful subcontracting. Backpay shall be computed in accordance with *F.W. Woolworth Co.*, 90 NLRB 289 (1950), if employees are no longer employed by the Respondent, and in accordance with *Ogle Protection Service*, supra, if employees remain employed by the Respondent, with interest as prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.[5] In addition, we shall order the Respondent to compensate the unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards and file with the Regional Director for Region 14, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee, in accordance with *AdvoServ of New Jersey, Inc.*, supra. The Respondent shall also be required to remove from its files any and all references to any unlawful layoffs if employees were laid off as a result of the unlawful subcontracting, and to notify each of the employees in writing that this has been done and that the unlawful conduct will not be used against them in any way.

If employees are no longer employed by the Respondent as a result of the unlawful subcontracting, we shall also order the Respondent to compensate unit employees for their search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings in accordance with *King Soopers, Inc.*, 364 NLRB No. 93 (2016), enfd. in relevant part 859 F.3d 23 (D.C. Cir. 2017). Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Taylor Roofing Solutions, Inc. and Capitol Roofing Solutions, L.L.C., a single employer, Belleville, Illinois, and Clayton, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with United Union of Roofers, Waterproofers and Allied Workers, Local Union No. 2 (the Union) as the limited exclusive collective-bargaining representative of the employees in the bargaining unit set forth in the collective-bargaining agreement in effect from August 22, 2017, through February 28, 2022 (the 2017–2022 Agreement), during the term of the agreement by failing and refusing to apply the terms and conditions of the agreement to the unit employees.

[4] To the extent that an employee has made personal contributions to a benefit or other fund that have been accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

[5] The effects of the subcontracting on unit employees, including whether they remained employed in other positions with the Respondent, are not clear from the language of the complaint. Accordingly, we leave this remedial issue to be determined at the compliance stage of the proceedings. See *WF Coal Sales Inc., a Successor to Cobalt Coal Ltd and its Subsidiaries*, 367 NLRB No. 77, slip op. at 2 fn. 3 (2019).

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Adhere to and comply with the terms and conditions of the 2017–2022 Agreement during the term of the agreement and bargain in good faith and obtain the consent of the Union before making any changes in the terms and conditions of employment set forth in the 2017–2022 Agreement during its term.

(b) Make whole the employees in the bargaining unit set forth in the 2017–2022 Agreement for any loss of earnings and other benefits suffered as a result of the Respondent's failure and refusal to apply the terms and conditions of the 2017–2022 Agreement to them, with interest, in the manner set forth in the remedy section of this decision.

(c) Compensate the unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 14, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

(d) Make all contractually required benefit contributions that have not been made since about August 22, 2017, and reimburse unit employees for any expenses ensuing from its failure to make such payments, with interest, in the manner set forth in the remedy section of this decision.

(e) Restore the status quo ante by transferring the work the Respondent subcontracted back to unit employees.[6]

(f) Within 14 days from the date of this Order, if unit employees whose work was subcontracted no longer work for the Respondent, offer those employees full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(g) Make all unit employees whole for any loss of earnings and other benefits they may have suffered as a result of its unlawful subcontracting, in the manner set forth in the remedy section of this decision.

(h) Within 14 days from the date of this Order, remove from its records all references to layoffs caused by the unlawful subcontracting of unit work, and within 3 days thereafter, notify each of the unit employees laid off as a result of subcontracting in writing that this has been done and that the layoffs will not be used against them in any way.

(i) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(j) Within 14 days after service by the Region, post at its facilities in Belleville, Illinois, and Clayton, Missouri, copies of the attached notice marked "Appendix."[7] Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 22, 2017.

(k) Within 21 days after service by the Region, file with the Regional Director for Region 14 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 28, 2019

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John F. Ring, Chairman

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Marvin E. Kaplan, Member

[6] At the compliance stage of the proceeding, the Respondent will be permitted to argue and present supporting evidence that restoring the status quo ante would be unduly burdensome. *San Luis Trucking, Inc.*, 352 NLRB 211, 211 fn. 5 (2008); *Allied General Services*, 329 NLRB 568, 569 (1999); *Lear Siegler, Inc.*, 295 NLRB 857, 861–862 (1989).

[7] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

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William J. Emanuel Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with United Union of Roofers, Waterproofers and Allied Workers, Local Union No. 2 (the Union) as the limited exclusive collective-bargaining representative of the employees in the bargaining unit set forth in our collective-bargaining agreement with the Union in effect from August 22, 2017, through February 28, 2022 (the 2017–2022 Agreement), during the term of the agreement by failing and refusing to apply the terms and conditions of the agreement to the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL adhere to and comply with the terms and conditions of the 2017–2022 Agreement during the term of the agreement and bargain in good faith and obtain the consent of the Union before making any changes in the terms and conditions of employment set forth in the 2017–2022 Agreement during its term.

WE WILL make whole the employees in the bargaining unit set forth in the 2017–2022 Agreement for any loss of earnings and other benefits suffered as a result of our failure and refusal to apply the terms and conditions of the 2017–2022 Agreement to the unit employees, with interest.

WE WILL compensate the unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 14, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

WE WILL make all contractually required benefit fund contributions that we have failed to make since about August 22, 2017, including any additional amounts due the funds, and WE WILL reimburse unit employees for any expenses ensuing from our failure to make the required payments, with interest.

WE WILL restore the status quo ante by transferring the work we subcontracted back to unit employees.

WE WILL, if you no longer work for us as a result of our unlawful subcontracting of unit work, offer you full reinstatement to your former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to your seniority or any other rights or privileges previously enjoyed, and WE WILL do so within 14 days from the date of the Board's Order.

WE WILL make you whole for any loss of earnings and other benefits you suffered as a result of our unlawful subcontracting, plus interest (if you continued to work for us but with fewer hours), and less any net interim earnings, plus interest, plus reasonable search-for-work and interim employment expenses (if you were laid off as a result of our unlawful subcontracting).

WE WILL, within 14 days from the date of the Board's Order, remove from our records all references to layoffs caused by our unlawful subcontracting of unit work, and WE WILL, within 3 days thereafter, notify you in writing that this has been done and that the layoffs will not be used against you in any way.

TAYLOR ROOFING SOLUTIONS, INC. AND CAPITOL ROOFING SOLUTIONS, L.L.C., A SINGLE EMPLOYER

The Board's decision can be found at www.nlrb.gov/case/14-CA-211073 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.